

VOL. 3093

**United States Court of Appeals for the
Ninth Circuit.**

See ALSO
3092

No. 16132.

JAMES MOON ET AL.,
PLAINTIFFS, APPELLANTS,

v.

CABOT SHOPS, INC., ET AL.,
DEFENDANTS, APPELLEES.

BRIEF FOR APPELLEES.

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United States Court of Appeals for the Ninth Circuit.

No. 16132.

JAMES MOON ET AL.,
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BRIEF FOR APPELLEES.

Appellees have given a general outline of the case on appeal in their brief as cross-appellants, which brief deals principally with the issue of validity of the patent in suit. It is the purpose of this brief to present appellees' position with respect to the matter of infringement and in support of the holding by the District Court of non-infringement.

In discussing the issue of infringement we prefer to state appellees' position positively rather than respond in detail to appellants' brief.

The Gist of Appellees' Position on Infringement.

When Moon filed his application for patent, he sought broadly to claim a portable telescoping derrick so mounted on a vehicle that it pivoted, from horizontal road position to vertical operating position, about a hinge disposed at the forward, or driver's, end of the truck. For five years the Patent Office flatly refused to grant a patent of such

breadth, asserting, quite properly, that it did not amount to patentable invention merely to transpose the parts of the well-known prior art portable derricks, merely hinging the derrick at the front of the truck rather than at the rear as had been customary. Finally Moon accepted a patent specifically limited to an arrangement in which the legs of the derrick straddle the driver's position. That simply means that, when you sit in the driver's seat and look out the side windows of the cab, you see two derrick legs at one side of the cab and two other legs at the other side. In defendants' accused structures the legs of the derrick are all out ahead of the driver's position, the hinge being disposed, not over the driver's head, but out in front of him.

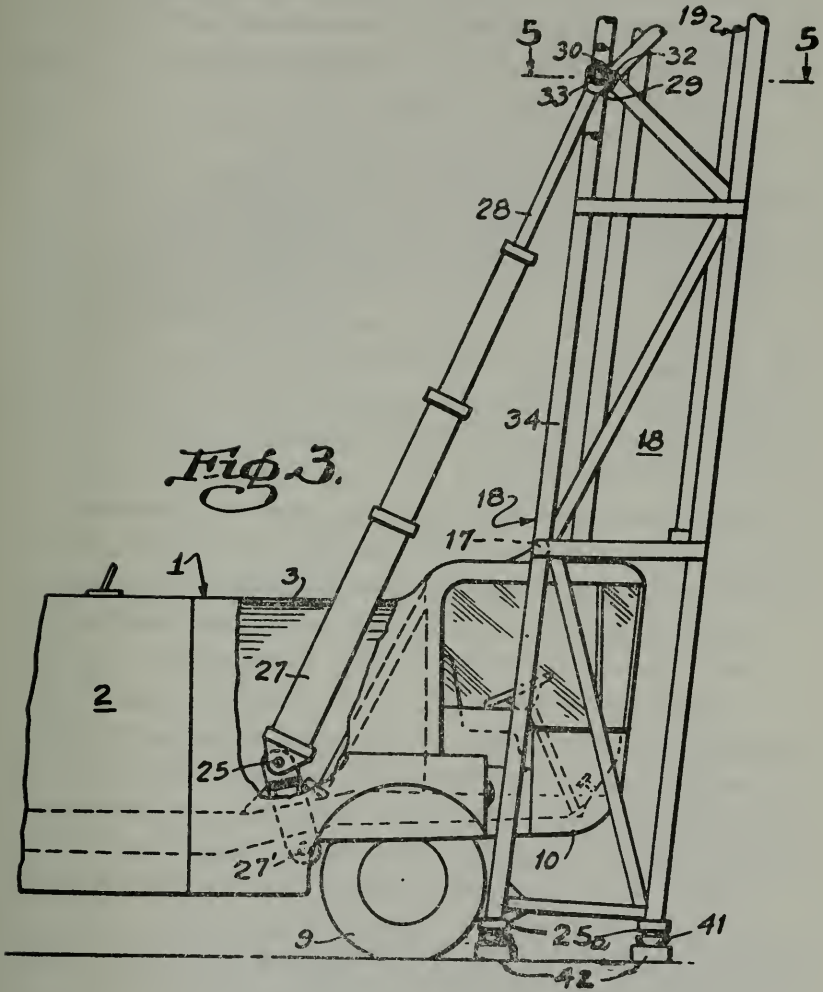
The History of the Moon Patent Application.

For the sake of convenience we reproduce on an adjoining page Fig. 3 of the patent in suit. We respectfully draw the attention of the Court to the rear legs 34 of the derrick 18. These legs are disposed on either side of the driver's position, as is evidenced by the location of the steering wheel and driver's seat, shown in the figure. The patent states, column 4, line 20 *et seq.*, record, page 647:

"It will be observed that no equipment associated with the truck is positioned in front of the driver. Particularly, as will be seen, the derrick legs straddle the cab, and the derrick, while it is being erected or retracted to rest position, does not obstruct the view of the operator of the cab."

By way of example we here quote claim 1 of the patent in suit, in which we have printed in red those parts which clearly define the necessary relationship between the legs of the derrick of the driver's position.

Fig 3.



“1. A portable derrick, comprising a chassis, front wheels mounted on an axle positioned adjacent the front end of the chassis, rear wheels mounted on an axle positioned adjacent the rear end of the chassis, a driver's position with steering and motive power controls positioned adjacent the front end of said chassis and extending forward of the front axle, a collapsible and extensible derrick pivotally mounted on the chassis to move from a rest position on said chassis with the top end of the derrick positioned rearwardly of said chassis and the bottom of said derrick being positioned on said chassis toward the front end of said chassis, spaced two front and two rear legs for said derrick, cross bracing between said legs with a free area between a portion of the rear legs, said derrick comprising a lower section and an upper section, means for moving said upper section relative to said lower section to extend and to collapse said derrick, a hinge on said derrick positioned near the bottom end of said derrick, said hinge also positioned on said chassis intermediate the forwardmost limits of said chassis and the front axle and above said driver's position, and means for rotating said derrick about said hinge to an erect position adjacent the front end of said chassis, said means including a rotation power transmitting member connected to said derrick at a point on said derrick spaced from said hinge, said transmitting member transmitting rotative power to said derrick to rotate said derrick about said hinge, and a load transmitting connection between said member and said chassis, said connection being positioned on said chassis between said front and rear axles, lower portions of said legs being spaced apart transversely with respect to said chassis a distance greater than the transverse extent of said driver's position,

and said lower leg portions and said hinge being located with respect to the longitudinal axis of said chassis to cause a portion of the driver's position to enter said free area and the lower rear leg portions to straddle said driver's position when the derrick is in said erect position."

Now let us contrast the issued claim with the claims Moon originally tried to secure. When the application for the patent was filed, its first claim read as follows (Ex. T, p. 9, Appendix, p. 14).¹

"1. A portable drilling derrick comprising a truck chassis, a cab mounted at the front of said chassis, a derrick positioned on said chassis, the legs of said derrick protruding ahead of said cab, a hinge on said derrick, the hinge point of said hinge being mounted on said chassis adjacent said cab, and means positioned on said chassis to rotate said derrick about said hinge point to move said derrick to an erect position."

That claim is typical.

The first action from the Patent Office comprised a single paragraph rejecting all of the claims in view of the patent to McEwen, appearing at page 898 of the record, the gist of the action being that it did not amount to invention to reverse the position of McEwen's derrick.

"Applicant has merely taken McEwen's derrick structure and reversed the position, enclosing McEwen's standards (7) in the cab of the truck and causing the derrick to be raised forward of the truck

¹ We have reproduced as an appendix to this brief several pages from Exhibit T, certified copy of the file wrapper of the patent in suit.

rather than to the rear of the truck. Applicant's change of position is a matter of mechanical expedience and is not considered to involve invention." (Ex. T, p. 16, Appendix, p. 16.)

Thereafter, as Exhibit T shows, Moon's counsel filed a lengthy amendment, together with an affidavit signed by Moon, all arguing that Moon should be granted a patent on the original claims together with new claim 6, appearing at page 17, Ex. T, and Appendix, p. 18. Then there was a further amendment filed on June 22, 1950, containing additional claims and more argument urging the allowance of broad claims to the general concept of a derrick hinged at the front end of the truck rather than at the rear end. Moon's counsel stated (Ex. T, p. 31, Appendix, p. 20):

"Each of said claims is directed to the feature whereby the derrick may be driven onto the job head-on. Each of the claims calls for the top end of the derrick to be positioned toward the rear of the chassis. This is in contradistinction to the prior art in which the top end of the derrick is positioned toward the front end of the chassis."

Then followed an official action of January 31, 1951, again rejecting the claims. The action referred to additional prior art in which devices other than oil well derricks had hoisting mechanism mounted at the front end of a vehicle. This brought forth a response from Moon's counsel containing further argument directed to his attempt to secure a patent broadly covering a front mounted derrick.

Once more the Patent Office, on April 25, 1952, issued an official action again refusing claims to the broad concept.

We now approach the critical event in the history of the Moon application. On September 18, 1952, Moon's counsel again filed a lengthy amendment, accompanied by a long affidavit again signed by Moon. Moon's counsel refers to an interview which had been granted by the Patent Office Examiner, saying:

"... the examiner indicated that a claim similar to new claim 14 would be, in his view, favorably considered if presented. One of the features which the examiner indicated as possibly carrying the claim over the then cited references was the straddling of the cab by the derrick when erected. It is respectfully urged that the new references do not in any way meet this claim, either alone or in combination with the cited references." (Ex. T, p. 48, Appendix, p. 26.)

"New claim 14" referred to in counsel's remarks appears at pages 44 and 45 of Ex. T, Appendix, pp. 22 and 24, and we draw attention of the Court to the last clause, reading as follows:

"the legs of said derrick straddling said cab when said derrick is in said erect and extended position."

After that, on May 28, 1953, the Examiner issued a further action largely raising some formal objections to the language of the proposed claims and indicating that they would be allowable when revised. Thereafter there was another interview with the Examiner (Ex. T, p. 75, Appendix, p. 28); the claims were rewritten as claims 1-4 of the issued patent. There was yet another interview with the Examiner (see Ex. T, p. 87, Appendix, p. 30), and the patent was then issued after some further inconsequential formalities.

We respectfully submit that a fair reading of the file wrapper reveals an exceptionally clear case of file wrapper estoppel. In other words, Moon first sought the allowance of broad claims but thereafter accepted claims of limited scope, in view of the art and the position of the Patent Office. He cannot now properly expand the language of the claims in the patent to cover territory which the file wrapper shows very clearly that he yielded.

Defendants' Structure does Not Infringe.

As the District Court held, appellees' accused structures are correctly shown, for example, in Exhibits 57 and 95. We have reproduced them, for convenience, in the appendix of this brief. Note Exhibit 57, for example, in which the hinge 26, about which the derrick pivots, is disposed as far forward as possible, that is to say, at the extreme upper front corner of the truck. The same relationship appears in the other exhibits referred to. While drawings are of course necessary and valuable in this connection, photographs tell a more graphic story. Here we refer to Exhibits C and AF, also reproduced in our appendix, received in evidence at pages 459 and 464 of the record, respectively. Exhibit C is a photograph of the accused structure with the derrick in the flat over-the-road position, while Exhibit AF is a photograph of similar apparatus with the derrick erected and the cab covered by a tarpaulin appearing at the left center of the photograph. These exhibits demonstrate the fact that in the accused structure the derrick has been moved bodily forward so that the relationship of the legs of the derrick, the steering wheel and the driver's seat is no longer that which appears in the patent (see reproduction of Fig. 3 thereof, *supra*). In defendants' structure the derrick is all forward of the vehicle when in erected

position. That arrangement simply does not correspond to the language of the claims of the patent in suit, such, for example, as that of claim 2, which requires:

“said hinge being positioned with respect to the longitudinal axis of said chassis locating said driver’s position between the said leg portions with the said leg portions straddling said driver’s position when the derrick is in said erect position.”

That is to say, it is quite plain that the language of the claim is not literally infringed by defendants’ structures. Of course that gives rise to the question as to whether the difference is one of substance or one which is only colorable and does not avoid infringement. One is also disposed to look at the doctrine of equivalents. That is where the file wrapper comes in. The claims Moon originally sought to obtain from the Patent Office would very definitely be infringed by the defendants’ structures. Since he limited his claims specifically to include the straddling feature, it seems evident that Moon is now estopped by the file wrapper from asserting the claims against a non-straddling structure, whether by way of interpretation of claim language itself or by the route of the doctrine of equivalents.

An Interesting Question.

It is abundantly clear from the file wrapper that Moon was not granted a patent covering broadly a telescoping derrick hinged for erection at the front end of a truck or chassis, the final word from the Patent Office being that such a claim would be invalid as involving nothing more than an obvious reversal of the parts of the McEwen de-

vice, well within the skill of the worker in the art and constituting nothing more than ordinary mechanical expediency. Therefore, it is established that the public has the right to build portable derricks which are hinged at the front of the truck. Now the patent claims state, in effect, that in so doing the public must be careful that the legs of the derrick do not straddle the cab or driver's position, since, if they do, the Moon patent would be infringed. The fallacy of appellants' position on this matter of infringement is well demonstrated by the following question:

“... If the public is free to build front mounted portable derricks but not free to build front mounted derricks in which the legs straddle the cab, how else can the public actually build non-infringing derricks *other* than by moving the hinge point forwardly far enough to avoid straddling?”

We most respectfully submit that defendants' structures cannot be held to infringe the claims of the patent in suit without thereby rendering it impossible for anyone to build a front-mounted derrick without infringement, in spite of the fact that the Patent Office very specifically refused to grant such broad rights to Moon.

Appellants' Brief.

We have carefully studied appellants' brief. We do not propose to comment on it in any detail, since it appears necessary only to point out that the brief is based on a fundamental refusal to face the facts evidenced in the file wrapper. *If Moon had originally* sought from the Patent Office the same claims he was granted, and *if* the file wrapper contained no evidence of the refusal of the Patent

Office to grant broad protection on a front-mounted derrick, *then* appellants could certainly have argued with force that the patent claims were entitled to a reasonable range of equivalents and that the claims were thereby infringed by defendants' structures. Indeed, appellants quote the argument of appellees' counsel before the District Court in which it was made crystal clear that the determining factor in this issue of infringement is the estoppel which arises from the file wrapper (Record, p. 501 *et seq.*).

When the force of the estoppel from the file wrapper is applied to the claims and to defendants' devices, it becomes crystal clear that the District Judge was eminently correct in ruling that the claims of the patent in suit had not been infringed.

The Law.

We know that the Court is conversant with the law pertaining to file wrapper estoppel and therefore feel that an extended discussion would be unnecessary. We cite a few representative cases in support of our position and note that perhaps the leading case on the subject is *Exhibit Supply Co. v. Ace Patents Corp.*, 315 U.S. 126, 86 Law. Ed. 736, in which Mr. Chief Justice Stone held that, where the claims granted in a patent are narrower than the claims originally sought, the difference is in effect a disclaimer. Then he states (p. 137):

"The difference which he thus disclaimed must be regarded as material, and since the amendment operates as a disclaimer of that difference it must be strictly construed against him. . . . As the question is one of construction of the claim, it is immaterial whether the examiner was right or wrong in rejecting the claim as filed."

This Court had occasion to consider a very similar situation in *D & H Electric Co. v. M. Stephens Mfg., Inc.*, 233 F. 2d 879, 110 U.S.P.Q. 469. The principles and the cases cited in that opinion are obviously applicable here. In that case Judge Stephens stated (pp. 883-884):

“Having asserted the novelty of the right angle principle in order to secure the patent, appellant cannot now expand his coverage to include other claims which were denied him in the proceedings before the patent office. This is simply the exercise of the doctrine of ‘file wrapper estoppel’—the gravamen of which is that an applicant who acquiesces in the rejection of his claim, and accordingly modifies it to secure its allowance, will not subsequently be allowed to expand his claim by interpretation to include the principles originally rejected or their equivalents.”

If in the above quotation the words “right angle” were replaced by “straddling,” the quoted paragraph would be entirely dispositive of the case at bar.

Conclusion.

We respectfully submit that the Court below is entirely right in holding that there had been no infringement in this case. The claims originally applied for would be infringed by defendants' structures; the granted claims are not. The granted claims cannot be interpreted as the equivalent of the denied claims, and, unless that be done, there can be no infringement of the claims of the patent by the devices of appellees.

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77 Franklin Street,

Boston, Massachusetts.

Appendix.

14

[FROM EXHIBIT T]

5276

I CLAIM:

1. A portable drilling derrick comprising a truck chassis, a cab mounted at the front of said chassis, a derrick positioned on said chassis, the legs of said derrick protruding ahead of said cab, a hinge on said derrick, the hinge point of said hinge being mounted on said chassis adjacent said cab, and means positioned on said chassis to rotate said derrick about said hinge point to move said derrick to an erect position.

2. A portable drilling derrick comprising a truck chassis, a cab mounted on the front of said chassis, front and rear wheels on said chassis, a derrick positioned on said chassis, the legs of said derrick protruding ahead of said cab, a hinge on said derrick, the hinge point of said hinge being mounted on said chassis adjacent said cab and ahead of said front wheels, a telescopic hydraulic jack pivotally mounted on said chassis behind said front wheels and connected to said derrick behind said hinge point.

3. A portable drilling derrick comprising a truck chassis, a cab mounted on the front end of said chassis, a set of standards mounted on said chassis, a derrick mounted on said standards, the bottom of the legs of said derrick protruding ahead of said cab, a cross member for said derrick near the end of said derrick, said cross member being hinged in said derrick, and means for rotating said cross member on said chassis.

I claim:

1. A portable drilling derrick comprising a truck chassis, a driver's cab fixedly mounted at the front of said chassis, a derrick positioned on said chassis, the legs of said derrick protruding ahead of said cab, a hinge on said derrick, the hinge point of said hinge being mounted on said chassis adjacent said cab, and means positioned on said chassis to rotate said derrick about said hinge point to move said derrick to an erect position.

2. A portable drilling derrick comprising a truck chassis, a driver's cab fixedly mounted on the front of said chassis, front and rear wheels and axles for said chassis, a derrick positioned on said chassis, the legs of said derrick protruding ahead of said cab, a hinge on said derrick, the hinge point of said hinge being mounted on said chassis adjacent said cab and ahead of said front wheels, and an extensible hydraulic jack pivotally mounted on said chassis behind said front axles and hingedly mounted on said derrick behind said hinge point.

3. A portable drilling derrick comprising a chassis, a driver's cab fixedly mounted on the front end of said chassis, a plurality of standards mounted on said chassis adjacent said cab, bearings mounted on said standards, a derrick positioned on said chassis, the bottom of the legs of said derrick protruding ahead of said cab, a cross member for said derrick positioned near the end of said derrick, said cross member being journaled in said bearings, and means for rotating said derrick on said cross member in said bearings to elevate said derrick.

FD-36

OFFICE OF THE
COMMISSIONER OF PATENTS
WASHINGTON, D. C.

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Paper No. 3

All communications respecting
this application should give the
serial number, date of filing,
and name of the applicant.

Please find below a communication from the EXAMINER
in charge of this application.

Lawrence L. King

Commissioner of Patents

OCT 18 1949

Philip Subkow
435 Roosevelt Building
Los Angeles 14, California

Division: 33 - Room 5087
Applicant: James Moon

Ser. No. 35,866
Filed June 28, 1948
For DERRICK MOUNTING FOR
PORTABLE TRILLING AND SERVICING
RIGS

This application has been examined.

Reference made of record:

McEwen et al.	2,331,558	Oct. 12, 1943	189-14
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References of interest:

Dow	2,175,381	Oct. 10, 1939	189-14
Woody	2,204,716	June 18, 1940	189-11
Fleischmann	2,471,735	May 31, 1949	254-86
Donley et al.	2,251,013	July 29, 1941	255-19.1

Claims 1-5 are rejected as failing to patentably differ from the patent to McEwen et al. Applicant has merely taken McEwen's derrick structure and reversed the position, enclosing McEwen's standards (7) in the cab of the truck and causing the derrick to be raised forward of the truck rather than to the rear of the truck. Applicant's change of position is a matter of mechanical expedience and is not considered to involve invention.

J. P. Shustake
Examiner

TWS/ec

This application has been examined.

Reference made of record:

McEwen et al.	2,331,558	Oct. 12, 1943	189-14
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References of interest:

Dow	2,175,381	Oct. 10, 1939	189-14
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Donley et al.	2,251,013	July 29, 1941	255-19.1

Claims 1-5 are rejected as failing to patentably differ from the patent to McEwen et al. Applicant has merely taken McEwen's derrick structure and reversed the position, enclosing McEwen's standards (7) in the cab of the truck and causing the derrick to be raised forward of the truck rather than to the rear of the truck. Applicant's change of position is a matter of mechanical expedience and is not considered to involve invention.

W. J. MUSHAKE

Examiner

DMS/ec

MAIL DIVISION

U. S. PATENT OFFICE

APR 11 1950

DIVISION 33

Div. 33
Room 5087
JAMES MOON
DERRICK MOUNTING FOR PORTABLE
DRILLING AND SERVICING AIDS
Filed June 28, 1948
Serial No. 35,666

Los Angeles, California, April 5, 1950

Hon. Commissioner of Patents
Washington 25, D.C.

Sir:

In response to Office action dated October 18, 1949, please amend the above-identified application as follows:

Add the following new claim:

446. A portable drilling derrick, comprising a vehicle chassis, front and rear wheels for said chassis, the ends of the legs of said derrick protruding ahead of said front wheels and the top end of said derrick being positioned toward the rear of said chassis, a hinge on said derrick, said hinge being mounted at the front end of said chassis, and means positioned on said chassis to rotate said derrick about said hinge point to move said derrick to an erect position. 447

REMARKS

The rejection is traversed.

The applicant, in reversing the position of the derrick so that the truck can drive head-on into position and need not back into position, has obtained advantages not possible with the cited prior art structures.

The McEwen reference is no different from the White Patent No. 2,204,713 cited at page 1, line 21, of the

Los Angeles, California, April 5, 1950

Hon. Commissioner of Patents
Washington 25, D.C.

Sir:

In response to Office action dated October 18, 1949, please amend the above-identified application as follows:

Add the following new claim:

***6. A portable drilling derrick, comprising a vehicle chassis, front and rear wheels for said chassis, the ends of the legs of said derrick protruding ahead of said front wheels and the top end of said derrick being positioned toward the rear of said chassis, a hinge on said derrick, said hinge being mounted at the front end of said chassis, and means positioned on said chassis to rotate said derrick about said hinge point to move said derrick to an erect position. ***

REMARKS

The rejection is traversed.

The applicant, in reversing the position of the derrick so that the truck can drive head-on into position and need not back into position, has obtained advantages not possible with the cited prior art structures.

The McEwen reference is no different from the White Patent No. 2,204,713 cited at page 1, line 21, of the

Ser. 35,666 - - - - -

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12. A portable drilling derrick was rigidly ^{answer} mounted on the front end of said truck chassis, ^{firmly} front and rear axles for said truck, wheels mounted on said axles, standards mounted on said chassis and positioned ahead of said front axles, a derrick hinged to said standards, the top end of said derrick being positioned toward the rear of said chassis, and means to rotate said derrick to an upright position about the said hinge.

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13. A portable drilling derrick was rigidly ^{answer} mounted on the front end of said truck chassis, ^{firmly} front and rear axles for said truck, wheels mounted on said axles, standards mounted on said chassis and positioned ahead of said front axles, a derrick hinged to said standards, the top end of said derrick being positioned toward the rear of said chassis, and an extensible boom mounted on said chassis at a point rearward of said standards, said jack being hinged to said derrick at a point rearward of the hinge point of said jack to said chassis.

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The above claims are believed to be new and original reasons advanced in the amendment dated April 1, 1924. The said claims is directed to the feature wherein the derrick may be driven into the job head-on. Each of the claims is directed to the top end of the derrick to be positioned toward the rear of the chassis. This is in contrast to the prior art in which the top of the derrick is positioned toward the front of the chassis.

Ser. 35,666 - - - - - 3

12. A portable drilling derrick comprising a truck chassis, a driver's cab fixedly mounted on the front end of said chassis, front and rear axles for said truck, wheels mounted on said axles, standards mounted on said chassis and positioned in said cab ahead of said front axles, a derrick hingedly mounted on said standards, the top end of said derrick being positioned toward the rear of said chassis, and means to rotate said derrick to an upright position about the said hinge.

13. A portable drilling derrick comprising a truck chassis, a driver's cab fixedly mounted on the front end of said chassis, front and rear axles for said truck, wheels mounted on said axles, standards mounted on said chassis and positioned in said cab ahead of said front axles, a derrick hingedly mounted on said standards, the top end of said derrick being positioned toward the rear of said chassis, and an extensible jack hingedly mounted on said chassis at a point rearward of said front axles, said jack being hingedly mounted on said derrick at a point rearward of the hinge point of said jack to said chassis. - - -

REMARKS

The above claims are believed patentable for the reasons advanced in the amendment dated April 5, 1950. Each of said claims is directed to the feature whereby the derrick may be driven onto the job head-on. Each of the claims calls for the top end of the derrick to be positioned toward the rear of the chassis. This is in contradistinction to the prior art in which the top of the derrick is positioned toward the front end of the chassis.

MAIL DIVISION
SEP 13 1952

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Div. 33
JAMES MOON
DERRICK MOUNTING FOR PORTABLE
DRILLING AND SERVICING RIGS
Filed June 28, 1948
Serial No. 35,666

Los Angeles, California, September 15, 1952

Hon. Commissioner of Patents
Washington 25, D.C.

Sir:

In response to Office action dated April 25, 1952,
please amend the above-identified application as follows:

Cancel the claims now in the case.

Add the following new claims:

1. A portable derrick, a chassis, front wheels mounted on an axle positioned adjacent the front end of the chassis, rear wheels mounted on an axle positioned adjacent the rear end of the chassis, a driver's cab positioned at the front end of the chassis, a collapsible and extensible derrick pivotally mounted on the chassis to move from a rest position on said chassis with the top end of the derrick positioned rearwardly of said chassis behind said cab and the bottom of said derrick being positioned on said chassis toward the front end of said chassis, spaced front and rear legs for said derrick, cross bracing between said legs, said derrick comprising a lower section and an upper section, means for moving said upper section to collapse said derrick and to reduce the length of said derrick when said derrick is in said collapsed position in said rest position on said chassis, a hinge on said derrick positioned near the bottom end of said derrick, said hinge also positioned on said chassis adjacent the front end of said chassis.

(cont.)

Los Angeles, California, September 15, 1952

Hon. Commissioner of Patents
Washington 25, D.C.

Sir:

In response to Office action dated April 25, 1952, please amend the above-identified application as follows:

Cancel the claims now in the case.

Add the following new claims:

--- 14. A portable derrick consisting of a chassis, front wheels mounted on an axle positioned adjacent the front end of the chassis, rear wheels mounted on an axle positioned adjacent the rear end of the chassis, a driver's cab positioned at the front end of the chassis, a collapsible and extensible derrick pivotally mounted on the chassis to move from a rest position on said chassis with the top end of the derrick positioned rearwardly of said chassis behind said cab and the bottom of said derrick being positioned on said chassis toward the front end of said chassis, spaced front and rear legs for said derrick, cross bracing between said legs, said derrick comprising a lower section and an upper section, means for moving said upper section to collapse said derrick and to reduce the length of said derrick when said derrick is in said collapsed position in said rest position on said chassis, a hinge on said derrick positioned near the bottom end of said derrick, said hinge also positioned on said chassis adjacent the front end of said chassis and in front of said front axle, means for rotating said derrick about said hinge to an erect position adjacent the front end of said chassis, said means including a rotation power transmitting member connected to said derrick at a point on said derrick spaced from said hinge, said transmitting member transmitting rotative power to said derrick to rotate said derrick about said hinge, and a load transmitting connection between said member and said chassis, said connection being positioned on said chassis

Ser. 35,666 -----2

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(Cons.)

and in front of said front axle, means for rotating said derrick about said hinge to an erect position adjacent the front end of said chassis, said means including a rotation power transmitting member connected to said derrick at a point on said derrick spaced from said hinge, said transmitting member transmitting rotative power to said derrick to rotate said derrick about said hinge, and a load transmitting connection between said member and said chassis, said connection being positioned on said chassis between said front and rear axles, (and means to erect said upper section on said lower section to extend said derrick when said derrick is in an erect position, the legs of said derrick straddling said cab when said derrick is in said erect and extended position.

15. A portable derrick, a chassis, front wheels mounted on an axle positioned adjacent the front end of the chassis, rear wheels mounted on an axle positioned adjacent the rear end of the chassis, a driver's cab positioned at the front end of the chassis, a motive power unit positioned adjacent the rear end of said chassis, a winch positioned in said chassis between the motive power unit and said cab, a collapsible and extensible derrick pivotally mounted on the chassis, above said cab, winch and power unit, to move from a rest position on said chassis with the top end of the derrick positioned rearwardly of said chassis behind said cab, the bottom of said derrick being positioned on said chassis toward the front end of said chassis, spaced front and rear legs for said derrick, cross bracing between said legs, said derrick comprising a lower section and an upper section, means for moving said upper section to collapse said derrick and to reduce the length of

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between said front and rear axles, and means to erect said upper section on said lower section to extend said derrick when said derrick is in an erect position, the legs of said derrick straddling said cab when said derrick is in said erect and extended position.

15. A portable derrick, consisting of a chassis, front wheels mounted on an axle positioned adjacent the front end of the chassis, rear wheels mounted on an axle positioned adjacent the rear end of the chassis, a driver's cab positioned at the front end of the chassis, motive power unit positioned adjacent the rear end of said chassis, a winch positioned on said chassis between the motive power unit and said cab, a collapsible and extensible derrick pivotally mounted on the chassis, above said cab, winch and power unit, to move from a rest position on said chassis with the top end of the derrick positioned rearwardly of said chassis behind said cab, the bottom of said derrick being positioned on said chassis toward the front end of said chassis, spaced front and rear legs for said derrick, cross bracing between said legs, said derrick comprising a lower section and an upper section, means for moving said upper section to collapse said derrick and to reduce the length of

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*End of
D'*
bearing away from said truck at an acute angle to the vertical when said derrick is in an erect position. ~~4-4~~

REMARKS

The applicant wishes to express his appreciation for an oral interview had with the Examiner in February of 1952, prior to the issuance of the last Office action. At that time the references in the case were discussed, proposed claims were informally submitted, and the Examiner indicated that a claim similar to new claim 14 would be, in his view, favorably considered if presented. One of the features which the Examiner indicated as possibly carrying the claim over the then cited references was the straddling of the cab by the derrick when erected. It is respectfully urged that the new references do not in any way meet this claim, either alone or in combination with the cited references. The additional claims 15 to 17 are likewise patentable.

The rejection: 6

Applicant understands the rejection to be as follows:

(1) McEwen shows an oil derrick of the same class as is used by applicant.

(2) Derricks have been mounted on trucks so that they are hinged at the front end of the truck and Tonley points out that in so doing the driver can drive directly to the spot where he wishes to erect the derrick. Derricks have been hinged on the top of the cab of cranes (Feist); and that

(3) Therefore, there is no invention in doing the same thing in the McEwen derrick, and no invention in hinging the derrick on the front of the derrick and over the cab.

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bearing away from said truck at an acute angle to the vertical when said derrick is in an erect position.

REMARKS

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(3) Therefore, there is no invention in doing the same thing in the McEwen derrick, and no invention in hinging the derrick on the front of the derrick and over the cab.

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#4 cont'd

leg portions and said hinge being located with respect
 to the longitudinal axis of said chassis, ^{canceled} ~~to the~~ a
 portion of the driver's position to be positioned between
 the said leg portions, said leg portions extending from
 said hinge to rest on the ground and straddle said
 driver's position with the derrick in said erect posi-
 tion with the hinged derrick in load transference re-
 lationship to the ground.

REMARKS

Applicant expresses his appreciation for the
 courteous interviews recently accorded his attorney.
 As a result of these interviews, the above four claims
 18-21 are substituted for the claims previously in the
 application.

Before considering the present claims, it is
 desired to briefly summarize wherein the present applica-
 tion embodies patentable invention. Applicant is the
 first to provide a portable oil well derrick wherein the
 derrick is erected adjacent the front end of a self
 powered mobile unit, such as a truck. Since these derrick-
 icks must be positioned with precision, the advantages
 attendant this construction are obvious. Previously
 filed affidavits attest to the commercial success of this
 structure and the recognition of its advantages by the
 trade. The Examiner has cited numerous patents from the
 art of truck mounted booms and masts of various types.

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#4 *cont'd*

leg portions and said hinge being located with respect to the longitudinal axis of said chassis causing a portion of the driver's position to be positioned between the said leg portions, said leg portions extending from said hinge to rest on the ground and straddle said driver's position with the derrick in said erect position with the hinged derrick in load transference relationship to the ground. * *

REMARKS

Applicant expresses his appreciation for the courteous interviews recently accorded his attorney. As a result of these interviews, the above four claims 18-21 are substituted for the claims previously in the application.

Before considering the present claims, it is desired to briefly summarize wherein the present application embodies patentable invention. Applicant is the first to provide a portable oil well derrick wherein the derrick is erected adjacent the front end of a self powered mobile unit, such as a truck. Since these derricks must be positioned with precision, the advantages attendant this construction are obvious. Previously filed affidavits attest to the commercial success of this structure and the recognition of its advantages by the trade. The Examiner has cited numerous patents from the art of truck mounted booms and masts of various purposes.

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#5 cont'd

aid chassis a distance greater than the transverse extent of said driver's position; and said lower ends, said means cooperating therewith, and said hinge being located with respect to the longitudinal axis of said chassis locating said lower ends of one pair of front and rear legs and their respective cooperating means to one side of said driver's position and the lower ends of the other pair of front and rear legs and their respective cooperating means to the other side of said driver's position with the derrick in said erect position. #

REMARKS

Applicant expresses his appreciation for the courteous and helpful interview recently accorded his attorney. At this interview it was agreed that if the foregoing changes were made in claims 18-21 originally submitted by amendment filed November 25, 1953, but not entered, the two amendments would be entered concurrently, and the application would be allowed. It was also agreed that added claim 22 is allowable for reasons set forth hereinbelow.

Claims 18-21 are amended as to overcome the Examiner's holding of inaccurate, indefinite, and functional. Also, the present amendment eliminates a double inclusion originally present in claims 18, 19, and 21. That claims 18-21 set forth patentable invention has been fully discussed in the previous amendment. By the present amendment, these claims are placed in condition for allowance.

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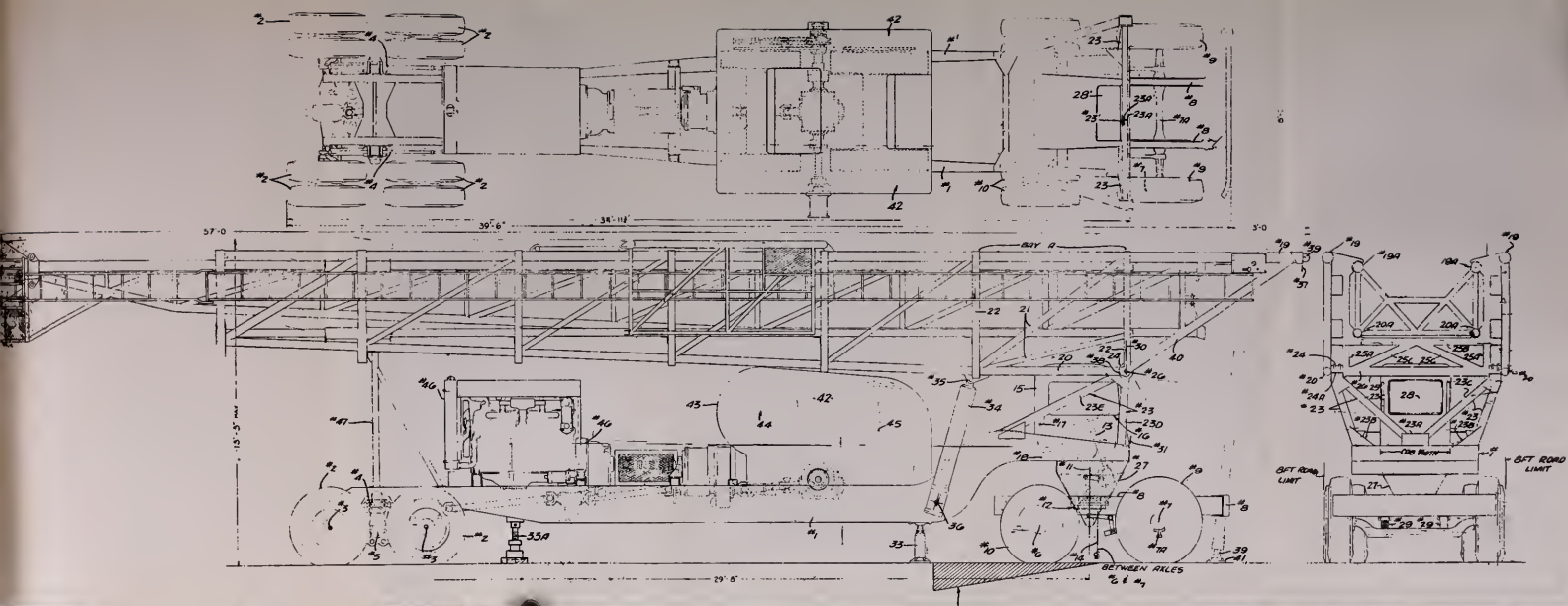
#5 *cont'd*

said chassis a distance greater than the transverse extent of said driver's position; and said lower ends, said means cooperating therewith, and said hinge being located with respect to the longitudinal axis of said chassis locating said lower ends of one pair of front and rear legs and their respective cooperating means to one side of said driver's position and the lower ends of the other pair of front and rear legs and their respective cooperating means to the other side of said driver's position with the derrick in said erect position. * *

REMARKS

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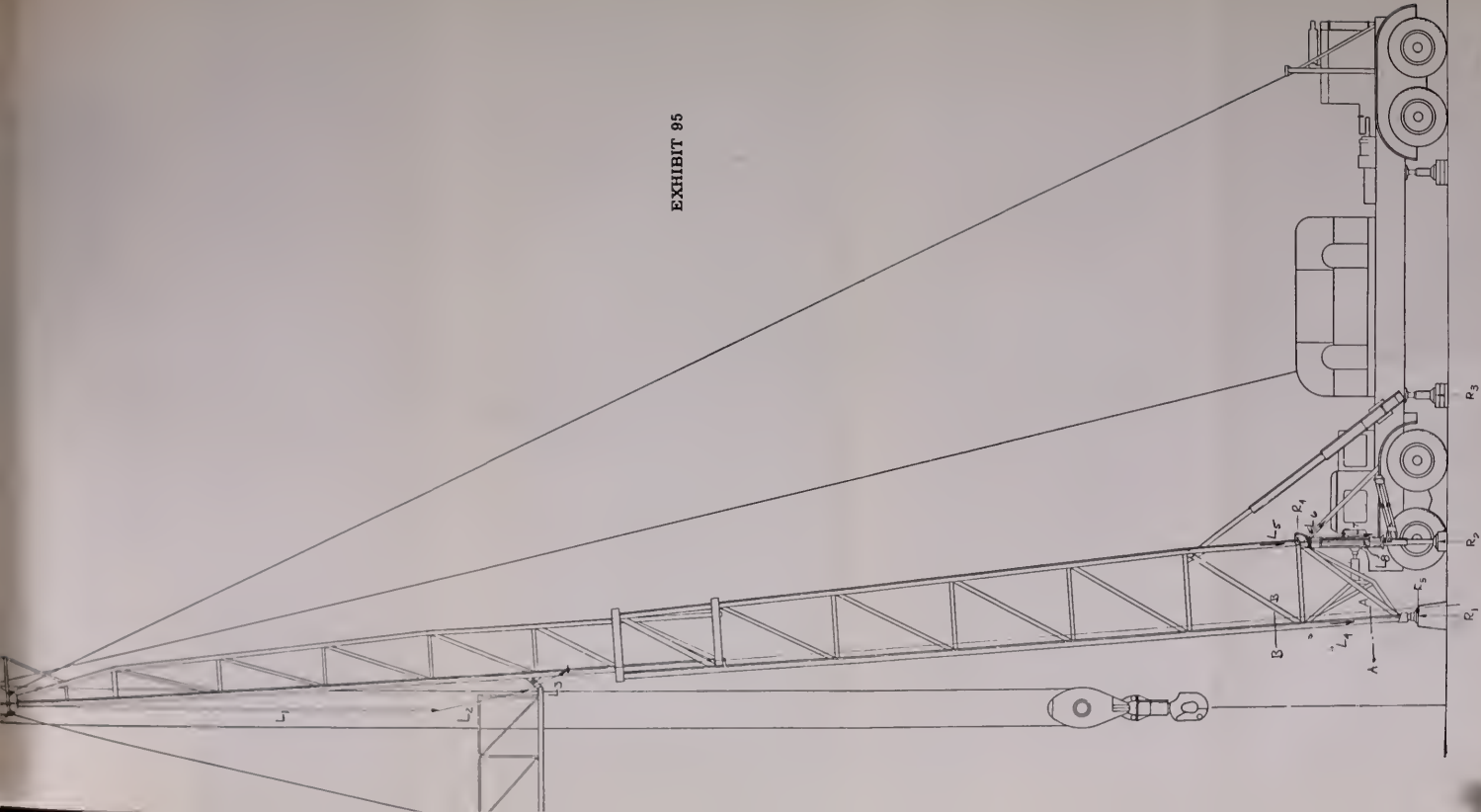
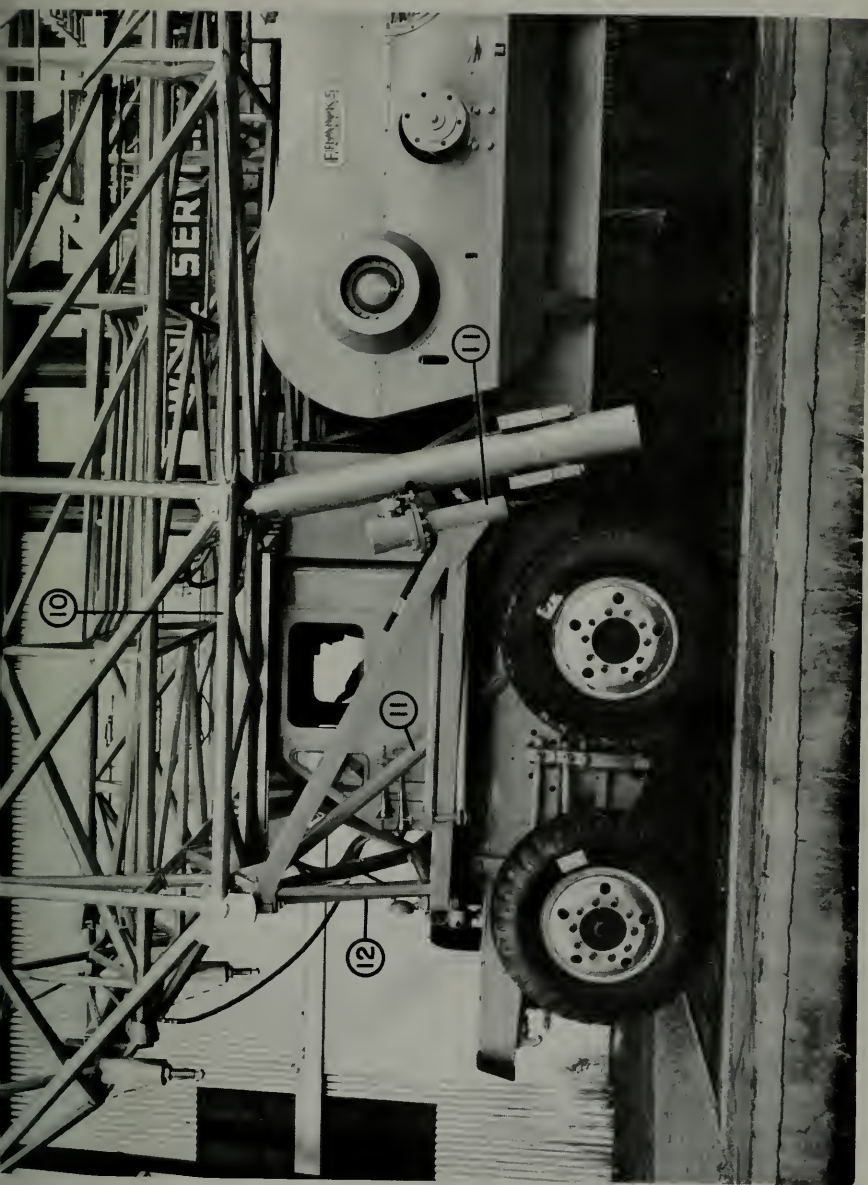


EXHIBIT 95

[EXHIBIT C]



[EXHIBIT AF]



